

Andrew Rozynski (Pro Hac Vice To Be Filed)

EISENBERG & BAUM, LLP

24 Union Square East, Penthouse

New York, NY 10003

Tel: (212) 353-8700

Fax: (917) 591-2875

E-mail: arozynski@EandBLaw.com

William A. Richards #013381

Shayna G. Stuart #034819

RICHARDS & MOSKOWITZ PLC

1850 N. Central Avenue, Suite 2010

Phoenix, Arizona 85004

Telephone No. 602-595-7800

Facsimile No. 602-812-7995

E-mail: brichards@RMazlaw.com

ssstuart@RMazlaw.com

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Dianne L. Needham,

Plaintiff,

v.

Panera, LLC,

Defendant.

Case No.

COMPLAINT

Plaintiff Dianne Needham, by and through her undersigned counsel, Eisenberg & Baum, LLP and Richards & Moskowitz, PLC, hereby states her Complaint against Defendant Panera, LLC as follows based upon personal knowledge and information and belief:

INTRODUCTION

1. Dianne L. Needham (“Plaintiff”) is a late-deafened person, meaning that she lost her hearing as an adult. Plaintiff was treated rudely and differently than hearing persons by

1 Panera, LLC (“Defendant”) employees because of her disability when she attempted to order
2 food from a Panera drive-thru location at 14826 N. Pima Road, Scottsdale, Arizona 85260.

3 2. Through this discriminatory treatment, Plaintiff learned not only that Defendant’s
4 restaurants and drive-thru windows are inaccessible to deaf individuals, but that Defendant’s
5 employees and managers are inadequately trained and improperly informed about the
6 communication rights and needs of deaf people.

7 3. Plaintiff brings this lawsuit to compel Defendant to cease its unlawful
8 discriminatory practices and implement policies and procedures that will ensure that effective
9 communication, full and equal enjoyment, and a meaningful opportunity to participate in and
10 benefit from Defendant’s restaurant services.

11 4. Plaintiff seeks injunctive and declaratory relief, nominal and compensatory
12 damages, and attorneys’ fees and costs to redress Defendant’s unlawful discrimination against
13 her on the basis of her disability in violation of Title III of the Americans with Disabilities Act
14 (“ADA”), 42 U.S.C. § 12181 et seq; and the Arizonans with Disabilities Act (“AzDA”), A.R.S.
15 § 41-1492, et seq.

16 **THE PARTIES**

17 5. Plaintiff is a resident of Maricopa County, Arizona, who is substantially limited
18 in the major life activity of hearing. Thus, she is a qualified individual with a “disability” within
19 the meaning of federal and state civil rights laws.

20 6. Upon information and belief, Defendant Panera Bread Company is a foreign for-
21 profit corporation with a registered address for service at 221 Bolivar Street, Jefferson City,
22 Missouri, 65101, and a principal office address at 3630 South Geyer Road Suite 100, St. Louis,
23 Missouri 63127. Upon information and belief, Defendant is a chain store of fast casual
24 restaurants with over 2,000 locations, including in Scottsdale, Arizona. Panera is a place of
25 public accommodation within the meaning of federal and state civil rights laws.

26 **JURISDICTION AND VENUE**

27 7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
28 §§ 1331 and 1343 for Plaintiff’s claims arising under federal law, and supplemental jurisdiction

1 pursuant to 28 U.S.C. § 1367 for Plaintiff's claims arising under state law.

2 8. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant has
3 sufficient contacts with this District to subject it to personal jurisdiction at the time this action
4 is commenced, and the acts and omissions giving rise to this Complaint occurred within this
5 District.

6 **STATEMENT OF FACTS**

7 9. Plaintiff is a deaf individual who lost her hearing as an adult.

8 10. Upon information and belief, Defendant owns, operates and/or leases a Panera
9 restaurant located at 14826 N. Pima Road, Scottsdale, Arizona 85260.

10 11. On multiple occasions between November 2020 and January 2021, Plaintiff
11 attempted to utilize the drive-thru of this Panera restaurant location.

12 12. Defendant's drive-thru service is provided via specialized automobile driveway
13 lanes which stretch around Defendant's restaurants. In order to obtain drive-thru service,
14 customers maneuver their vehicles into the drive-thru lane and relay their food order to Panera
15 employees via microphone. Customers then drive their car further along the lane and retrieve
16 their food from windows on the side of Defendant's restaurant.

17 13. Because Defendant's drive-thru ordering system requires a customer to utilize
18 hearing and speaking through a microphone, Plaintiff had significant difficulties in placing her
19 food orders, and would often receive incorrect or missing food items.

20 14. As such, on the occasions at issue, Plaintiff instead drove to the drive-thru
21 window and attempted to place her order from an employee at the window.

22 15. On these occasions, Plaintiff informed Defendant's employee that Plaintiff was
23 deaf and could not hear, and told the employee her order.

24 16. Rather than accommodate Plaintiff's disability and allow her to wait for her order
25 at the drive-thru window, Defendant's employees would ask Plaintiff to leave the drive-thru
26 lane and wait for her order elsewhere in the parking lot.

27 17. On one occasion, Plaintiff attempted to have her incorrect food order corrected
28 by pulling up to the drive-thru window and asking Defendant's employee to speak slowly to

1 her and confirm her order. The employee told Plaintiff that they cannot allow her to do, and
2 told her to pull up and go inside the store for service.

3 18. Not only was Plaintiff hesitant to enter Defendant's location at the height of the
4 ongoing COVID-19 pandemic, but there was no indication Defendant would accommodate her
5 disability inside the store when they refused to do so at the drive-thru window.

6 19. On another occasion, Plaintiff asked for one of Defendant's managers to ensure
7 that her order was being taken correctly. The manager, "Cassandra," appeared frustrated and
8 impatient, and again told Plaintiff to either go inside the store or wait for her order in the parking
9 lot.

10 20. When Plaintiff voiced her frustration with her lack of access to the drive-thru, and
11 the resulting frequency of incorrect orders, the manager offered Plaintiff coupons which came
12 with a handwritten note stating: "use at any *other* location" (emphasis added).

13 21. Because of Plaintiff's inability to meaningfully access Defendant's drive-thru
14 services, and the rude treatment by Defendant's employees and managers, Plaintiff expressed
15 her disappointment with Defendant's senior management via email dated January 7, 2021.

16 22. Plaintiff outlined in this email that "there is no mechanism for a hearing-impaired
17 individual to facilitate such clear communications; no push button at the speaker box for
18 improved clarity; no signage stating if you are deaf or hearing impaired to pull up to order
19 directly from the window; not even a call button to indicate you are deaf or hard of hearing."

20 23. Plaintiff's email also described her own experiences at Defendant's drive-thru: "I
21 cannot hear the associate from the call box; at best, I lean way out of my car window to have
22 them repeat and repeat what they are saying. When I have asked to come to the window I am
23 told they cannot have me do that because of the 'other customers who would have to wait
24 longer' or 'I can pull up and go inside.'" Plaintiff also requested information as to how
25 Defendant planned to resolve this lack of access for deaf and hard of hearing individuals at its
26 drive-thru locations. Plaintiff wrote a similar email to Defendant's social media team.

27 24. On January 8, at 2:59 pm, Defendant's "Social Media Customer Care
28 Coordinator", Claire Watson, responded to Plaintiff, stating "I want to start by apologizing for

1 your experience in the drive-thru because I know our team did not meet the expectation of
2 putting our guests first. [. . .] We're working directly with the leadership team that oversees this
3 café to address this training opportunity with our associates. [. . .] We want to ensure that you,
4 along with any other hearing-impaired guests, are able to order in the drive-thru and have the
5 same great experience you expect when dining in. We greatly appreciate the chance to learn
6 how to better serve our guests. Thank you for bringing this to our attention – please don't
7 hesitate to [reach] back out to me here."

8 25. Plaintiff responded to Ms. Watson at 4:46 pm, stating that "I would like to know
9 why Panera Bread does not have the access features for hearing-impaired individuals available
10 at their drive-through call boxes that similar businesses do. The technology has long been
11 available in the marketplace. What is the Panera Bread corporate policy for providing access to
12 their drive-throughs for hearing-impaired individuals, or does Panera Bread not have a policy
13 addressing access for individuals with disabilities?" Plaintiff repeated that "hearing-impaired
14 people cannot communicate with the drive-through equipment as it exists at that location," and
15 requested "that an executive or high-level manager will provide direct answers to my questions
16 and concerns, and how and when this will be corrected."

17 26. Later that day, Defendant's senior Regional Vice President, Jeff Harman, replied
18 to Plaintiff's 4:46 pm email, assuring her that "I'm personally looking into the issue you
19 experienced below" as he is "responsible for the western half of the country," and asking for a
20 time to discuss Plaintiff's issues. Mr. Harman's email copied Tina Smith and Mike Adams,
21 noting that they "are responsible at a regional and local level for the Scottsdale Panera cafés."

22 27. Over the next few days, Plaintiff and Mr. Harman exchanged emails discussing
23 times to meet and discuss Defendant's accessibility issues.

24 28. On or around January 15, 2021, Plaintiff received a gift basket and an apology
25 from Mike Adams for Defendant's treatment of Plaintiff. Accordingly, Plaintiff emailed Mr.
26 Harman to thank them and to follow-up on a time to discuss her issues with Mr. Harman. Mr.
27 Harman responded that he would send over some times and dates that would work for him.

28 29. These scheduling emails continued back-and-forth until January 29, 2021, when

1 Mr. Harman emailed Plaintiff stating “Hi Dianne – We (finally) have some actionable follow-
2 up and potentially a process to put into place. Could you and I find time next Tuesday or
3 Wednesday to connect?”

4 30. Eventually, Plaintiff and Mr. Harman were able to schedule a phone meeting for
5 February 3, 2021 to discuss Defendant’s purported plan to implement policies and procedures
6 regarding the accommodation of deaf and hard of hearing customers.

7 31. Immediately following this phone call, Mr. Harman sent a series of draft updated
8 policies and procedures regarding Defendant’s treatment of deaf and hard of hearing customers
9 to Plaintiff for her review and input. These documents included a slideshow titled “Panera
10 Bread – Accommodating Drive-Thru Guests with Hearing Impairments,” which provided draft
11 policies and procedures for accommodating deaf and hard of hearing individuals at Defendant’s
12 drive-thrus, and provided a timeline for implementation of those policies and procedures by the
13 end of February 2021. Mr. Harman also included a Microsoft Word document with Defendant’s
14 logo at the top titled “Updated Guest Service in the Drive-Thru,” which specifically stated that
15 its purpose was “[e]levating our Drive Thru experience for deaf and hard of hearing guests to
16 ensure we’re accommodating their needs and decreasing potential friction when ordering in our
17 Drive-Thru.” This document outlined additional potential procedures for accommodating
18 customers who are deaf and hard of hearing.

19 32. On February 4, 2021, Plaintiff emailed Mr. Harman with her comments and
20 thoughts on Defendant’s proposed policy. That same day, Mr. Harman responded “Dianne, the
21 feedback is valuable and I appreciate it, like I mentioned still in its initial stages. Would like to
22 connect next week for a calibration.”

23 33. Despite Mr. Harman’s email, and multiple follow-up emails from Plaintiff,
24 Plaintiff did not hear from Mr. Harman for the remainder of February 2021.

25 34. Accordingly, on March 1, 2021, Plaintiff wrote to Mike Adams, thanking him for
26 the gift basket and stating that “I am wondering how things are going/any further progress with
27 addressing the access issue for deaf/hearing impaired folks who use the Panera Bread café
28 drive-through service.” Plaintiff also noted that Mr. Harman “had sent me an email (Feb. 4th)

1 about continuing our discussion with another call but I haven't heard from him since then. I
2 reached out to him twice via email but never heard back. I know he is busy but he is usually
3 very responsible and hope all is okay. Would you let him know I am trying to reach him?"
4 Plaintiff also explained that "[i]n the near future I hope to return as a customer to a Panera cafe
5 drive-through. My return is dependent upon receiving equal access at the drive-through. As I
6 told Jeff it is embarrassing and diminishing to not feel welcome, which I never expected. I
7 experienced Sudden Hearing Loss (in less than a week, no known cause) after living my entire
8 life with normal hearing so challenges like using a drive-through restaurant service window can
9 be unpleasant."

10 35. Mr. Harman finally reached out to Plaintiff on March 4, again asking to schedule
11 a time to "touch base" and apologizing for the delay. Plaintiff and Mr. Harman exchanged
12 emails back and forth over the next week, each time with Mr. Harman giving an excuse for not
13 being able to talk with Plaintiff.

14 36. Plaintiff and Mr. Harman were finally scheduled to speak on March 11, 2021. On
15 March 11, at 7:26 am, Mr. Harman wrote "I'm so sorry for the back and forth. The airport is a
16 madhouse and I'm trying to find a quiet place. Would you be flexible enough to try this again
17 later this afternoon or even tomorrow?" At 8:28 am, Plaintiff replied, "No worries. I can't do
18 rest of today and tomorrow. Let's go with a time next week."

19 37. That same day, at 9:34 am, Mr. Harman responded to Plaintiff, "I'm appreciating
20 you right now. A lot. I actually have some items to share and this allows some time to get it
21 over." At 9:53 am, Plaintiff replied "Ok. Will look for it."

22 38. At 9:07 am, Mr. Harman emailed Plaintiff again, stating "I didn't forget about
23 you. I'm being dropped off at the airport and just need to get to my gate."

24 39. Plaintiff never heard from Mr. Harman or anyone else from Panera again.

25 40. Based on the above-described incidents, Defendant's drive-thru ordering system,
26 which requires a customer to utilize hearing and speaking, is inaccessible to deaf individuals.
27 Defendant offers no accessible or alternative means for deaf individuals, including Plaintiff, to
28 utilize the drive-thru in a manner equal to the service offered to hearing individuals.

46. Defendant's Scottsdale location is in close vicinity to Plaintiff's home. Plaintiff still wishes to attend this Panera location, but it deterred from doing so by Defendant's discriminatory acts and omissions.

I. COUNT I: Violations of Title III of the Americans with Disabilities Act.

50. At all times relevant to this action, Plaintiff has had substantial limitations to the major life activity of hearing and has been an individual with a disability within the meaning

1 of the ACA, 42 U.S.C. § 18116.

2 51. Defendant owns, leases, and/or operates a place of public accommodation within
3 the meaning of Title III of the ADA, 42 U.S.C. § 12181(7)(D).

4 52. Title III of the ADA provides that “[n]o individual shall be discriminated against
5 on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
6 privileges, advantages, or accommodations of any place of public accommodation by any
7 person who owns, leased (or leases to), or operates a place of public accommodation.” 42
8 U.S.C. § 12182(a).

9 53. Title III of the ADA also provides that “[i]t shall be discriminatory to afford an
10 individual or class of individuals, on the basis of a disability or disabilities of such individual
11 or class, directly, or through contractual, licensing, or other arrangements with the opportunity
12 to participate in or benefit from a good, service, facility, privilege, advantage, or
13 accommodation that is not equal to that afforded to other individuals.” 42 U.S.C. §
14 12182(b)(1)(A)(ii).

15 54. Title III of the ADA further defines discrimination to include “a failure to remove
16 architectural barriers, and communication barriers that are structural in nature, in existing
17 facilities . . . where such removal is readily achievable,” or “where an entity can demonstrate
18 that the removal of a barrier . . . is not readily achievable a failure to make such goods, services,
19 facilities, privileges, advantages, or accommodations available through alternative methods if
20 such methods are readily achievable.” 42 U.S.C. § 12182(b)(2)(A)(iv-v).

21 55. Federal regulations implementing Title III of the ADA provide that “[a] public
22 accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure
23 effective communication with individuals with disabilities.” 28 C.F.R. § 36.303(c).

24 56. As set forth above, Defendant discriminated against Plaintiff on the basis of her
25 disability in violation of Title III of the ADA and its implementing regulations.

26 57. Defendant has failed to implement policies, procedures, and training of staff
27 necessary to ensure compliance with Title III of the ADA.

28 58. Plaintiff is therefore entitled to injunctive relief, as well as an award of attorneys’

1 fees, costs, and disbursements pursuant to the ADA, 42 U.S.C. § 12188(a)(1).

2 **II. COUNT II: Violations of the Arizonans with Disabilities Act.**

3 59. Plaintiff incorporates by reference all preceding paragraphs and realleges them in
4 support of this claim.

5 60. At all times relevant to this action, the AzDA, A.R.S. § 41-1492 et seq., has been
6 in full force and effect and has applied to Defendant's conduct.

7 61. At all times relevant to this action, Plaintiff has had substantial impairment to the
8 major life activity of hearing, and is therefore a qualified individual with a disability within the
9 meaning of the AzDA, A.R.S. §§ 41-1492(6) and (8)(a).

10 62. At all times relevant to this action, Defendant's restaurants have been places of
11 public accommodation within the meaning of the AzDA, A.R.S. § 41-1492(11)(b).

12 63. The AzDA states that "[n]o individual may be discriminated against on the basis
13 of disability in the full and equal enjoyment of the goods, services, facilities, privileges,
14 advantages or accommodations of any place of public accommodation by any person who
15 owns, leases, leases to others or operates a place of public accommodation. A.R.S. § 41-
16 1492.02(A).

17 64. Discrimination under the AzDA includes "[a] failure to make reasonable
18 modifications in policies, practices or procedures, if these modifications are necessary to afford
19 these goods, services, facilities, privileges, advantages or accommodations to individuals with
20 disabilities, unless the entity can demonstrate that making these modifications would
21 fundamentally alter the nature of these goods, services, facilities, privileges, advantages or
22 accommodations." A.R.S. § 41-1492.02(G)(2).

23 65. Discrimination under the AzDA also includes "[a] failure to take such steps as
24 may be necessary to ensure that no individual with a disability is excluded, denied services,
25 segregated or otherwise treated differently than other individuals because of the absence of
26 reasonable modifications in policies, practices or procedures or auxiliary aids and services,
27 unless the entity can demonstrate that taking these steps would fundamentally alter the nature
28 of the goods, service, facility, privilege, advantage or accommodation being offered or would

1 result in an undue burden.” A.R.S. § 41-1492.02(G)(3).

2 66. As set forth above, Defendant discriminated against Plaintiff on the basis of her
3 disability in violation of the AzDA.

4 67. Defendant has also failed to implement policies, procedures, and training of staff
5 necessary to ensure compliance with the AzDA.

6 68. The AzDA provides that “[a]n aggrieved person may file a civil action in superior
7 court not later than two years after the occurrence or the termination of an alleged
8 discriminatory public accommodation practice or the breach of a conciliation agreement entered
9 into under this article, whichever occurs last, to obtain appropriate relief with respect to the
10 discriminatory public accommodation practice or breach.” A.R.S. § 41-1492.08(C).

11 69. Plaintiff is therefore entitled to declaratory and injunctive relief, compensatory
12 damages, and attorney’s fees, costs, and disbursements pursuant to A.R.S. §§ 41-1492.08 and
13 41-1492.09.

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, Plaintiff Dianne Needham respectfully requests that this Court:

16 A. Enter a declaratory judgment under Rule 57 of the Federal Rules of Civil
17 Procedure, stating that Defendant’s policies, procedures, and practices have subjected Plaintiff
18 to unlawful discrimination in violation of Title III of the Americans with Disabilities Act and
19 the Arizonans with Disabilities Act;

20 B. Issue an injunction forbidding Defendant from implementing or enforcing any
21 policy, procedure, or practice that denies deaf or hard of hearing individuals or their
22 companions meaningful access to, and full and equal enjoyment of, Defendant’s facilities,
23 services, or programs;

24 C. Issue an injunction ordering Defendant to:

- 25 i. develop, implement, promulgate, and comply with a policy prohibiting
- 26 future discrimination against Plaintiff or other deaf or hard of hearing
- 27 customers and accommodate those customers at Defendant’s drive-thrus;
- 28 ii. develop, implement, promulgate, and comply with a policy to ensure that

RICHARDS & MOSKOWITZ PLC
1850 N. Central Avenue, Suite 2010
Phoenix, Arizona 85004
Telephone 602-595-7800
Facsimile 602-812-7995

Defendant will accommodate and consider the communication needs of deaf and hard of hearing individuals who seek Defendant's goods and/or services and will affirmatively work with such individuals to provide effective auxiliary aids and services to make its services available;

iii. train all employees, staff, and other agents on a regular basis about the rights of individuals who are deaf or hard of hearing under the ADA and AzDA and ensure compliance with the modified policies and procedures ensuring access to such individuals;

D. Award to Plaintiff:

- i. Compensatory damages pursuant to the AzDA;
- ii. Nominal damages;
- iii. Reasonable costs and attorneys' fees pursuant to the ADA and AzDA;
- iv. Interest on all amounts at the highest rates and earliest dates allowed by law; and
- v. Any and all other relief that this Court deems just and appropriate.

RESPECTFULLY SUBMITTED this 21st day of September, 2021.

RICHARDS & MOSKOWITZ PLC

/s/ William A. Richards
William A. Richards
Shayna G. Stuart
1850 N. Central Avenue, Suite 2010
Phoenix, AZ 85004

AND

EISENBERG & BAUM, LLP
Andrew Rozynski, Esq.
24 Union Square East, Penthouse
New York, NY 10003
Attorneys for Plaintiff